

DECISION



Flickerman 25534

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-211879

DATE: June 24, 1983

MATTER OF: Zimmerman Plumbing and Heating Company

DIGEST: Submission of allegedly below-cost bids does not provide a basis for challenging the award of a contract.

Zimmerman Plumbing and Heating Company (Zimmerman) protests award to any bidder other than itself under a solicitation issued by the Veterans Administration (VA) for the Battle Creek Michigan Medical Center, project No. 515-811360. Zimmerman alleges that its bid was closest to the Government estimate and, therefore, was the only accurate bid.

We dismiss the protest.

Zimmerman characterizes the other two bids which were received by VA as not having been correctly prepared as required. Zimmerman alleges that the other two bids cannot be evaluated by the Government. In support of these allegations, the protester points out that the other two bids contain prices for several items which are substantially below the prices which Zimmerman bid. In essence, the protester is either alleging that the low bidders' prices must be erroneous, or that the bidders are attempting a buy-in.

There is no suggestion that either lower bidder has claimed a mistake; in any event, if the prices submitted appear so unreasonably low as to suggest error, the contracting officer will be obligated to seek appropriate verification prior to making an award. Crimsko, Inc., B-210724, March 24, 1983, 83-1 CPD 304; 51 Comp. Gen. 498 (1972).

To the extent that Zimmerman is arguing that the allegedly unrealistically low prices render the bids nonresponsive, the complaint is about the submission of a below-cost bid. However, this is not a valid basis to challenge an award since the practice of below-cost bidding

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is not illegal and the Government cannot withhold an award merely because the low bid is below cost. Teamster Local No. 270, B-208634, September 15, 1982, 82-2 CPD 230.

Further, whether the low bidder can adequately perform the contract at the bid price is a matter of responsibility. Before award, the agency must make an affirmative determination of the awardee's responsibility. Our Office will not review that determination absent a showing of fraud or bad faith on the part of the contracting officer, or of failure to apply definitive responsibility criteria, JLS Servco, B-208655.3, March 2, 1983, 83-1 CPD 219, neither of which has been alleged here.

Zimmerman's request for a conference on the protest is denied since, in light of the above, it would serve no useful purpose. Dyneteria, Inc., B-210304, February 7, 1983, 83-1 CPD 132.

Harry R. Van Cleve
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Acting General Counsel